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August 15, 2003

RECEIVED

AUG 19 2003

PUBLIC SERVICE
COMMISSION

VIA FACSIMILE (502) 564-7279
AND REGULAR MAIL

Thomas M. Dorman
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

**RE: An Investigation of East Kentucky Power Cooperative, Inc.'s Need For The
Gilbert Unit And The Kentucky Pioneer Energy, LLC Purchase Power
Agreement**
Case No. 2003-00030

Dear Mr. Dorman:

Enclosed please find and accept for filing the original and ten (10) copies of Kentucky Pioneer Energy, LLC's Objection to Motion to Intervene in the above-referenced case. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me in the self-addressed stamped envelope.

Should you have any questions or need any additional information, please contact me at your convenience.

Yours very truly,

Kendrick R. Riggs

KRR/ec

Enclosures

cc: Parties of Record
Richard Raff, General Counsel (via facsimile (502) 564-7279)
Dwight N. Lockwood, P.E., QEP
Mike Musulin, II
Harry H. Graves

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
AUG 19 2003
PUBLIC SERVICE
COMMISSION

In The Matter Of:

AN INVESTIGATION OF EAST KENTUCKY)	
POWER COOPERATIVE, INC.'S NEED FOR)	
THE GILBERT UNIT AND THE KENTUCKY)	CASE NO:
PIONEER ENERGY, LLC PURCHASE)	2003-00030
POWER AGREEMENT)	

**KENTUCKY PIONEER ENERGY, LLC'S OBJECTION
TO MOTION TO INTERVENE**

Kentucky Pioneer Energy, LLC ("KPE"), by counsel, in response to the request for intervention filed by Charles T. Walters ("Movant") on August 11, 2003, objects and requests the motion for intervention be denied.

The Movant's request fails to satisfy the standard for intervention set forth in 807 KAR 5:001 §3(8). This regulation does not provide an absolute right to any person seeking intervention in the proceeding. Only the Attorney General holds a comparable right to intervene because of his standing under KRS 367.150(8). The Attorney General in fact has exercised that right in its motion to intervene filed on February 7, 2003. Under 807 KAR 5:001 §3(8), intervention may be granted only if (1) the moving party has a special interest in this proceeding which is not otherwise adequately represented, or (2) full intervention by the party is likely to present issues or develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. 807 KAR 5:001 §3(8). The Movant's request to intervene does not meet either of these requirements and should be denied.

The Movant fails to adequately demonstrate a special interest in this proceeding. His motion to intervene simply makes the broad assertion that he “has property, economic and aesthetic interests in the protection of the quality of life in his community” and “interests in reliable, low-cost electric power.” (Walters Motion to Intervene filed August 11, 2003, p. 1). The Movant further contends that his “*specific* interests . . . as a residential and commercial ratepayer and member of the cooperative system may not be adequately represented by the other parties to this proceeding.” (Walters Motion to Intervene filed August 11, 2003, p. 3) (emphasis added). The “specific interests” asserted by the Movant, however, are not special or unique. The interests of residential and commercial customers will be fairly and adequately represented by the Commission and the Attorney General in this case. To permit his intervention in this case “will result in a proliferation of parties, substantial additional expense, and will unduly lengthen the proceedings.” *In the Matter of: Notice of South Central Bell Telephone Company of an Adjustment in its Intrastate Rates and Charges and The Volume Usage Measured Rate Service and Multiline Service Tariff Filing of South Central Bell Telephone Company*, Case Nos. 8847 and 8879, Order (October 18, 1983). Further, if his intervention is allowed, any number of other customers promoting their own “specific interests” may seek to intervene in this case or future proceedings.

As an electric residential and commercial customer, the Movant’s interests in this case are no different from other members of the general public. The public’s interest is represented both by the Commission and the Attorney General. In stating that it represents the public interest, the Commission has held:

[t]he Commission, in its role as the enforcer of KRS Chapter 278 and all regulations promulgated pursuant to that Chapter, represents the public interest. See KRS 278.040(1) and (3). See also Phillips, *Kentucky Practice*, 5th Ed., Civil Rule 24.01 at 422 (“[W]here . . . there is a party charged by law with

representing his interest, then there will be a presumption that the representation is adequate.”)

In the Matter of: Louisville Gas and Electric Company and BellSouth Telecommunications, Inc. – Alleged Violation of Commission Regulations 807 KAR 5:041, Section 3 and 807 KAR 5:061, Section 3, Case No. 96-246, Order (October 15, 1996) (emphasis added and citation omitted). Additionally, the General Assembly has expressly charged the Attorney General with representing the Movant’s interest in this proceeding. See KRS 367.150(8). Kentucky law thus presumes that the Attorney General’s representation is adequate. The Attorney General as a party to this proceeding thus adequately represents Movant’s interests.

The Commission has historically recognized that where, as here, a movant’s “interest appears to be indistinguishable from that of the public generally,” his motion to intervene should be denied. *In the Matter of: Application of Sprint Spectrum, L.P. on behalf of Wirelesco, L.P. for Issuance of a Certificate of Public Convenience and Necessity to Construct a Personal Communication Services Facility in the Louisville Major Trading Area (Prospect PCS Facility LV03C075B2), Case No. 96-322, Order (January 17, 1997).* However, the interested party “may attend the hearing and may offer public comment prior to the taking of evidence on this matter as may any member of the general public.” *Id.* The Movant’s request simply claims in part that he is a member of the general public. That interest is not distinguishable from that of the public generally. Therefore, the Movant’s interests are not an adequate basis for his intervention and the request should be denied.

The Movant further asserts that a “decision affirming the agreement” may adversely affect the movant’s ability to “vindicate his position” in an appeal before the Franklin Circuit Court. (Walters Motion to Intervene filed August 11, 2003, p. 3). The Movant refers to an appeal of his failed challenge of the Kentucky Natural Resources and Environmental Protection

Cabinet's ("KYEPC") interpretation of its own statutes and regulations. *See Walters v. Natural Resources and Environmental Protection Cabinet and Kentucky Pioneer Energy, Inc.*, CA No. 03-CI-561. The decision of the Commission, however, will not have any effect upon the appeal process or KYEPC's interpretation of its statutes and regulations. As such, the Movant does not have an interest at risk in this proceeding before the Commission and certainly, not a "special interest" that constitutes adequate grounds for his intervention.

Movant cites to KPE's siting application and his appeal before the Franklin Circuit Court as "strongly" suggesting that the Commission should not approve continuation of the Purchase Power Agreement. (Walters Motion to Intervene filed August 11, 2003, p. 3). His disagreement with the KYEPC and his views of the decisions by the Siting Board have no bearing on whether or not intervention is appropriate in this proceeding. His opinions and views on these matters are "just too remote" to support his intervention. *Inter-County Rural Electric Cooperative Corp. v. Public Service Commission*, Ky., 407 S.W.2d 127 (1966).

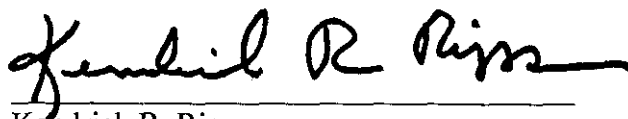
Finally, the Movant's request also fails to meet the alternate requirement for intervention. This is so because he is not "likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings." 807 KAR 5:001, Section 3(8). The present case involves highly technical and complex issues involving load forecasts, least-cost planning analysis and system resource acquisitions. Movant lacks the professional training and experience in these areas to present issues or develop facts that will assist the Commission in this case. The Commission has previously recognized that where a movant "does not possess the experience or qualifications necessary to present testimony as an expert," his intervention should be denied. Case No. 2003-00266, *In the Matter of Investigation into The Membership of Louisville Gas and Electric*

Company and Kentucky Utilities Company in The Midwest Independent Transmission System Operator, Inc., Order, (August 13, 2003) citing Case No. 2002-00146, In the Matter of: Application For Amended Environmental Compliance Plan and a Revised Surcharge to Recover the Costs, Order (February 11, 2003).

In sum, the Movant's request fails to satisfy either of the requirements for intervention and the motion should be denied.

WHEREFORE, Kentucky Pioneer Energy, LLC respectfully requests the Commission to issue an order denying the motion for intervention in this proceeding.

Respectfully submitted,

A handwritten signature in black ink, reading "Kendrick R. Riggs". The signature is fluid and cursive, with a horizontal line drawn underneath it.

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COUNSEL FOR KENTUCKY
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Objection to Motion to Intervene was served this 15th day of August 2003, by U.S mail, postage prepaid, upon:

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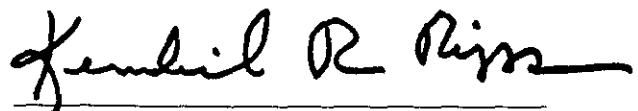
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